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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

DOROTHY CAMER

Petitioner ,

v.

SEATTLE POST-INTELLIGENCER

and SUSAN GOLDBERG

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO DIVISION I OF THE COURT OF APPEALS

OF WASHINGTON STATE

Petition of Dorothy Camer

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION

1. When an inexperienced education-beat reporter quotes out-of-court remarks of school district attorney does dismissal on summary judgment of plaintiffs' action for libel violate the first and fourteenth amendment rights when defendants have failed to demonstrate with clear and convincing evidence that the plaintiffs are public figures in the subject area on which the publication was written.

2. Can an article clearly identifying plaintiffs with pending court actions against the school district, implying that plaintiffs are part of a group of "constitutional crazies" flooding the courts with "frivolous litigation" based on false factual allegations doubling the actual number of suits filed by plaintiffs, and deviating from the bench-bar-press guidelines be privileged as a statement of mere "opinion?"

3. When the court thus summarily dismisses libel actions, are the due process rights of the

plaintiffs in any court action in which they participate endangered?

PARTIES

Petitioner: Dorothy Camer, plaintiff in the original action.

Coplaintiff: Margaret Coughlin

Respondents: Seattle Post-Intelligencer and Susan Goldberg

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The petitioner, Dorothy Camer, respectfully prays that a writ of certiorari issue to review the judgment and opinion of Division I of the Court of Appeals of the Washington State entered in this proceeding on August 20, 1986.

OPINIONS BELOW

The opinion of the Washington State Court of Appeals, Division I, is reported in 723 P 2d 1195, 45 Wn App 29 (1986) and reproduced in Appendix A of this Petition. The opinion was affirmed by the Washington State Supreme Court on January 6, 1987.

JURISDICTION

The judgment of the Washington State Court of Appeals was entered on August 20, 1986. Order denying motion for reconsideration by that court was entered on September 18, 1986. Order certifying the opinion of the Court of Appeals of the State of Washington, Division I by the Washington State Supreme Court was filed on January 30, 1987, and this petition was filed within 90 days from that date. The jurisdiction of this Court rest on 28 U.S.C. section 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; of abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the government.

The Fourteenth Amendment provides in part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

A. DEFAMED PARTIES

Plaintiffs Dorothy Camer and Margaret Coughlin are citizens of the United States residing in Seattle, Washington. Each had questioned decisions of the Seattle School District. Dorothy Camer's concerns related to

instructional matters; Margaret Coughlin's, to environmental planning of school buildings. Each plaintiff pursued separately her complaints into the state courts. Since this petition is prepared by Dorothy Camer as pro se, this statement will deal primarily with her understanding of the events.

Dorothy Camer is a parent and a computer systems analyst with a Ph.D in chemistry. At the time of the action she had three children in the Seattle Public Schools. Shortly after they entered the Seattle schools in 1978, Ms. Camer became aware of serious deficiencies in the school system. She carried her complaints up the administrative ladder of the school system with no relief. While many of the school personnel expressed some sympathy, none was willing to correct the problems.

In 1978, the Washington State Supreme Court had declared education a constitutional right for common school students. The laws of Washington required the school to perform

certain acts to fulfill those rights. Ms. Camer decided after reading the court decision and the laws, that the school district violated those rights. On April 9, 1980, she filed an action in the state court requesting a declaratory judgment determining the rights of her children to the pubished curricula of the Seattle School District. In June 1981 when the King County Superior Court dismissed the action on summary judgment, she decided to file an action in the federal courts under the Civil Rights Act, section 1983. At the same time she appealed the dismissal of the Superior Court suit. The decision of the appellate court upholding the dismissal was announced in June 1982, a week before the target publication.

In 1981 attempting to better monitor the education of her children, Ms. Camer requested access to assessments, tests, and lesson plans related to their education. The personnel of the school district resisted disclosure although Ms. Camer referenced both the federal

Family Education Rights and Privacy Act along with the Washington State Public Disclosure Act. After repeated requests for over a year, Ms. Camer filed a third action against the school district on April 19, 1982, for failure to disclosed public documents. This was just two months prior to the publication of the article which was to become the target for this libel suit. These three lawsuits were the only ones filed by plaintiff Camer at the time of the target publication.

B. THE SITUATION GIVING RISE TO THE ARTICLE

The legal counsel of the School District in some out-of-court remarks to Susan Goldberg, the educational beat reporter of the Seattle Post-Intelligencer (P.I.), aired his dissatisfaction with the time required to respond to the court cases of Dorothy Camer. Defendant Goldberg, who had been with the P.I. for less than six months at the time, expressed an interest in plaintiffs who had filed multiple

court actions against the school district. Michael Hoge, the counsel, named Margaret Coughlin as another person who filed multiple legal suits. Mr. Hoge provided the reporter with access to his files on the two plaintiffs' actions and referred the reporter to other attorneys who had knowledge of the two plaintiffs.

The reporter, after reviewing the files of the two plaintiffs for about an hour in the legal counsel's offices and interviewing the other attorneys, prepared an article for her paper. She represented the story as pertaining to the "impact of frivolous cases on government attorneys." It is presented here in part:

'NUISANCE' SUITS CLOG THE COURTS

> "The cases have become something of a joke.
>
> There was the man who sued the state claiming the sales tax held him in involuntary servitude.
>
> After losing the case he sued the judge and the attorney general . . . after losing that case, he sued the judge, attorney general, appellate

court judges and all nine state supreme court justices.

. . ."it sucks away a very precious commodity to us and the commodity is time." says Mike Redman, executive secretary of the Washington Association of Prosecuting Attorneys.

CONSTANT LITIGANTS

Redman's complaints are echoed in the legal libraries and law offices of the state attorney general, city hall and Seattle School District where the constant battle against "nuisance suers" as they are known costs the government agencies - and the taxpayers - millions each year.

The constant litigants are sometimes just angry citizens. Many however are prisoners, bucking for a way to get out. Sometimes they succeed and in at least one case the result, says Redman, is no laughing matter.

. . .

'CONSTITUTIONAL CRAZIES'

. . . There are also the suits brought by "constitutional crazies," he says. Those are the people who think "flouridated water is a communist plot to enslave us or insist the only legal tender is gold and battle in court over the use of paper money.

Then there are suits by those "who are just not operating with a level bubble," Redman says. Those are the

people who keep overworked county prosecutors busy responding to charges he says are preposterous on their face.

In all Redman estimates that state's county prosecutors spend about $750,000 each year not counting court costs and outside attorneys fees to fend off the myriad of frivolous charges brought by constant litigants.

Similar charges are leveled, correctly or not, at Seattle citizens like Dorothy Camer and Margaret Coughlin, who together have filed nearly two dozen separate legal actions against the state, city and Seattle School District.

Both women often represent themselves, which is called a "pro se" case. They prepare their own legal briefs and arguments without an attorney.

Camer, a West Seattle mother, has taken the district to court six times in the last three years - not counting numerous appeals and reconsiderations - over a variety of educational issues on behalf of her children, Pepi and Kirk. In addition, she has filed three Office for Civil Rights complaints against the district and one against the state.

She has never won a case.

Camer would not talk to the Post-Intelligencer. She said she was "too busy" preparing a legal brief asking

for a reconsideration on a case she recently lost.

Margaret Coughlin, a Magnolia resident, is also a familar face in the courts and to attorneys for the school district and city.

Coughlin, says attorney Dick Mann, who says he has "spent many, many hours" defending the city against her suits has been taking the city to court "non-stop" since 1974, mnostly about zoning disputes and what she claims are inadequate environmental impact statements prepared by the city.

"Her file is kept in giant cardboard boxes." Mann says.

In addition, Coughlin brought the school district to court three times in 1981 about environmental impact statements she says are faulty. Two of those case, says Dave Burman, who is representing the district against Coughlin, are still pending.

Like Camer, Coughlin said that she, too, could not talk to the P-I because she is busy working on an appeal for a case she recently lost against the city.

THOUSANDS OF DOLLARS

Attorneys for the city and district are hesitant to estimate how much constant litigators cost their agencies - and the taxpayers.

"It is well into the thousands of dollars," is the only guess Mann will make about the Coughlin cases alone.

Michael Hoge, attorney for the school district, puts it this way. "If you count the outside attorneys' fees, my own time and that of others in the office, over the past two or three years it would not be an exaggeration to say that we've spend about $20,000 a year on these cases."

The three Coughlin cases alone have so far cost the district $8,000 in legal fees racked up by Burman, who was brought in from a private firm to handle the case.

The district's legal office budget was about $500,000 this year.

"We've got dozens of those people," says Malachy Murphy, deputy state attorney general.

. . . Moreover he says his office fights over 100 "pro se" cases each year brought by citizens.

"Most of these cases are not legitimate," Murphy says. "The claims are so off the wall they have to represent themselves."

Although the people responsible for the constant suits range from convicted felons to ordinary folks with a beef about government. Murphy says they all have one thing in common.

"A characteristic of these people is that they have the absolute inability

to accept a no from government or a judge," he says.

. . . (underscore mine)

The article appeared in the news section on June 20, 1982, in two editions of the Sunday paper. Prior to the publication, no particular attention had been paid to Ms. Camer by the defendants although she acknowledged frequent communication with various media including the defendants. Only one letter-to-the-editor by Ms. Camer was printed in a local weekly several years prior. Since June 20, 1982, no other articles have been published about Ms. Camer nor any follow-up article presenting another side to pro se suits clogging the courts.

Only two months before the publication Ms. Camer had filed a public disclosure action against the school district. Three months later in September 1982, Ms. Camer's public disclosure action was dismissed by the King County Superior Court. It took her two years to have the appellate court reversed that

dismissal and another year to win the case when it was heard. The decision was not finalized until June 12, 1986, two days after the court of appeals heard oral argument for the present libel case.

C. THE PROCEEDINGS BELOW

Plaintiffs filed a libel action based on the article in July 1982 against the P.I. and Susan Goldberg. They claimed that they had been held up for ridicule and that publication at a time when they had pending court actions denied them due process. The plaintiffs were initially represented by Lawrence McDonell, who developed cancer and passed away in the spring of 1986.

During deposition Ms. Goldberg refrained from expressing any opinion of the plaintiffs' court cases and acknowledged her inexperience in legal matters. She also admitted that she had not attended any hearings of any of the

actions of the plaintiffs nor researched their actions in the county clerk's office.

In interrogatories, the defendant P.I. stated that they adhere to the Associated Press Style Manual and the Washington State Bench-Bar-Press Guidelines as standards.

After depositions of the defendant Susan Goldberg, her editor, and all of the attorneys as well as the two plaintiffs, the defendants moved for summary judgment on the basis that the falsity stating that Ms. Camer filed six actions (instead of three) was not material and that the article was not of and concerning the plaintiffs. The defendants further argued that implications that the plaintiffs' suits were frivolous were opinion and therefore privileged. They did not explain the deviation of the publication from the bench-bar-press guidelines.

Summary judgment was granted by the King County Superior Court. Plaintiffs appealed on the grounds that there was insufficient

evidence to declare them public figures for the purpose of the publication and that the article was published with reckless disregard for truth evidenced by the failure to adhere to the bench-bar-press guidelines.

The state appellate court ruled that plaintiffs were public figures because they wrote letters to the editor, spoke out at public hearings and meetings in attempts to influence the resolution of their areas of interest (i.e. education and environment) which because of their lawsuits became the subject of the article. The court further ruled that since the characterization of the Camer and Couglin cases as frivolous and nuisances was opinion and therefore not provable, the comments were also not actionable.

The opinion of the appellate court was prepared by Judge Rosselle Pekelis on August 6, 1986. Reconsideration was denied by Judge C. Kenneth Grosse on September 18, 1986. Both

judges were on the ballot in the November 1986 election.

REASON FOR GRANTING WRIT

A. THE STATE COURT OF APPEALS, IN APPLYING THE DECISION OF TIMES V. SULLIVAN TO A PLAINTIFF ON THE BASIS OF A SINGLE LETTER PUBLISHED IN A LOCAL WEEKLY (NOT THE DEFENDANT PUBLICATION), EXPANDS THE CONCEPT OF PUBLIC FIGURE TO VIRTUALLY EVERY CITIZEN OF WASHINGTON STATE.

The finding of the lower court that plaintiff Dorothy Camer "had been quoted in the newspaper on various District-related issue and has written 'letters to the editor' criticizing the District'" (p. A-7) was supported on the record by only one letter on education published in a local weekly several years earlier. No evidence was presented that the P.I. had ever published any letters from Ms. Camer or reported any of her statements made at public hearings or meetings. While this court does not normally review findings of

facts, CR 52(b) provides for questioning the sufficiency of evidence when facts are determined by the lower court without benefit of jury and where the issue is material to the action. (See Bose Corp v. Consumer Union, 466 U.S. 485 (1984))

The lower court finding that "There is no clear boundary between the subjects of their lawsuits and the subject of the article (p. A-28)" is clearly arbitrary. Indeed, there is no connection whatever between the subject of the lawsuits - public schools - and the subject of the article - frivolous litigation. Nor did the plaintiffs seek to resolve the issue of frivolous cases or clogged courts (p. A-10) since they declined to talk to the reporter.

The lower court properly refers to Bender v. Seattle, 664 P 2d 492, 99 W 2d 582, 600 (1983) (p. A-26) that "A person is not considered a public figure solely because he or she has sought relief through the courts or is involved in a controversy which is newsworthy.

To be considered a public figure, courts usually require the plaintiff to voluntarily seek to influence the resolution of public issues." and then violates its own authorities (p. A-26) when it rules plaintiffs public figures solely because they have sought relief through the courts and thus are involved in the newsworthy controversy of "clogging the courts."

None of the statements in the article discuss the legal theories on which plaintiffs have filed suit, instead the article attacks plaintiffs based on a false statement of the number of suits which have been filed and on the fact that plaintiffs represent themselves. The article states that Camer filed six actions but the record shows that only three had been filed as of the date of publication of the defamatory article. The court mistakenly increased this number to ten (p. A-5) by confusing court actions with civil rights complaints and appeals (p. A-7).

Plaintiffs never thrusted themselves into the area of interest in the article, as did Exner in Exner v. American Medical Ass'n, 529 P 2d 863, 12 W App 215 (Div. I 1974), but rather were pulled into the controversy by the out-of-court remarks of the district counsel, as was Hutchinson in Hutchinson v. Proxmire, 443 U.S. 111, 99 S.Ct 2675, 61 LEd 411 (1979).

The lower court ruling is inconsistent with Gertz v. Welch, 418 U.S. 323, 94 S.CT 2997, 41 LEd 2d 1094 (4974) and Rosenblatt v. Baer, 383 U.S. 75, 86 S.Ct. 669, 15 LEd 2d 297 (1966) which require clear evidence of general fame or notoriety in the community and reference to the individual's participation in the particular controversy giving rise to the defamation, Gertz, id at 324.

The plaintiffs have not been attacked in the article for their views on the general subject matter of the article - i.e., frivolous litgation, nor for their views in the area of their interest. They have been attacked for

using their first amendment rights to petition the government by filing court actions in the areas of their interest.

No evidence demonstrates that the plaintiffs influenced the solutions of any issues at all nor was there evidence of public interest in the ideas of the plaintiffs, not Ms. Camer's anyway. Thus Ms. Camer did not have sufficient access to the media required by Gertz, id and Himango v. Prime Time Broadcasting, 680 P 2d 432, 37 W App 259 (Div. I 1984) to be declared a public figure. It is clear that the decision declares the plaintiffs public figures solely on the basis of their having filed court actions contrary to the state standard of Bender, id.

Since it is likely that most citizens have some occasion to write an editor or contact a newspaper concerning some matter of interest (in a democratic republic it is desirable for citizens to do so) the lower court's decision opens almost every state citizens to attack by

the media, if that citizen also incurs the disfavor of a public official. This outcome is inconsistent with Hutchinson, id. and Times v. Sullivan, 376 U.S. 254, 84 S.Ct 710, 11 LEd2d 686 (1964). The decision of Times v. Sullivan, id p. 282, encourages free speech not only of the press but all citizens. It emphasizes the need to consider "the privilege for citizen-critics of government." and "the censorial power . . . (of) the people over the Government not the Government over the people." The appellate court decision seriously inhibits first amendment free expression and right to petition the government of all Washington citizens.

B. THE COURT OF APPEALS BY IGNORING THE DEVIATION OF THE DEFENDANT PUBLISHER FROM THE WASHINGTON COURT BENCH-BAR-PRESS GUIDELINES AS AN ELEMENT OF ACTUAL MALICE PRESENTS AN IMPORTANT QUESTION FOR THIS COURT TO DECIDE IF THE COURT CONCLUDES THAT THE STANDARD OF ACTUAL MALICE SHOULD APPLY IN THIS CASE.

The court acknowledges that "the average reader, knowing little or nothing about the two women, could reasonably conclude that plaintiffs are viewed as bringing frivolous or nuisance lawsuits" (p. A-18). There is no question but that the article intended these women to be included in the class held up for public obloquy as persons who clog the courts with nuisance suits. The article intends to create the false impression that the plaintiffs are nuisances by falsely doubling the number of cases attributed to Camer (six instead of three). The clear identification of the plaintiffs and their residences leaves no doubt as to whom article refers, Sims v. KIRO, 580 P 2d 642, 20 W App 229 (1978). Indeed, the

only purpose of citing the plaintiffs in the article was as examples of frivolous litigants.

The elaborate attempt by the appellate court to interpret the article as not being of and concerning the plaintiffs is inconsistent with Sims v. KIRO, id, Benjamin v. Cowles Pub., 684 P 2d 739, 37 W App 916 (1984), and McNair v. Hearst Corp, 494 F 2d 1309 (9th Cir 1974). The court then attempts to justify the libel on the basis that it is opinion and cannot be proven false. The confusion of the court is very apparent in this area of the decision (p. A-19 ff). Case law distinguishes between the opinion of the reporter and that of the people quoted by the report.

If the opinion is that of the reporter, then Amsbury v. Cowles Pub., 458 P 2d 882, 76 W 2d 733 (1969) and Spelson v. CBS, 581 F Supp 1195 (N.D. Ill. 1984), aff'd 757 F 2d 1291 (1985) apply. The defendant reporter clearly did not do the investigation such as CBS performed in their research on cancer as cited by

the court (p. A-23, 24). Neither was the article presented as the opinion of the author as in Rye v. Seattle Times, 37 W App 45, 678 P 2d 1282 (1984). The defendant reporter was not a columnist but a beat reporter and the article appeared as news. The decision recognized that the reporter was not representing her opinion (p. A-22) since she uses the phrase "correctly or not," but it fails to recognized the reporter's responsibility to verify the truth of what she is reporting Amsbury v. Cowles, id and Miller v. Argus Pub., 490 P 2d 101, 79 W 2d 816 (1971). Indeed defendants should have been familiar with this requirement since they were the defendants in McNair v. Hearst, id, in which that court ruled that summary judgment was improper because the false impression of the article is a question for the jury to determine.

The appellate court incorrectly (p. A-24) compares the circumstances of this article with that of Information Control Corp. v. Genesis

One Computer Corp., 611 F.2d 731, 784 (9th Cir 1980) where the "audience may anticipate efforts by the parties to persuade others to their position by use of epithets, fiery rhetoric or hyperbole . . " In this article the opinions expressed were not in heated debate or even in court hearings. They were the indiscrete remarks of public attorneys using the advantage of their position to manipulate the press and slander government critics, directly contrary to the intent of Times v. Sullivan, id.

Even under normal conditions the defendants should have known that fair reporting requires presenting both sides. Since the plaintiffs had pending cases before the court, bench-bar-press guidelines urge the reporter to be particularly alert to "the constitutional right to a fair trial and against a public "attorney" taking unfair advantage of his position

as an important news source," Washington Court Rules (1984), p. 915.

The Bench-Bar-Press Principles and Guidelines were substantially rewritten in 1986 but, prior to that revision, had been in effect without change since 1974. While the guidelines are voluntary, the defendants claimed to adhere to them in their interrogatories and provided no explanation for deviating in publishing the target article. Instead the defense argued that these guidelines had never been used as a standard in previous cases.

The purpose of the principles and guidelines is "to seek accommodation between the constitutional rights of fair trial and free press." The principles acknowledge in part:

> 1. The News Media have the right and responsibility to print the truth.
>
> 2. Parties to litigation have the right to have their cause tried fairly by an impartial tribunal.
>
> 3. No trial should be influenced by the pressure of publicity from news media . . ., and journalists share

the responsibility to prevent the creation of such pressures.

4. All news media should strive for objectivity and accuracy.

Under "Guidelines for Reporting of Civil Proceedings" they states:

9. Litigants in civil causes, including causes having special news value because of public interest in the subject matter, are as much entitled to a fair trial by an unbiased jury as is a criminal defendant . . . The media acknowledges that the pretrial reporting of civil cases may involve the same risks to the administration of justice as the pretrial reporting of criminal cases. Pretrial coverage of civil cases should be balanced to minimize this risk.

10. When two or more related civil jury cases are being tried in series, the reporting of one disposition may prejudicially affect subsequent trials.

11. Representatives of the news media should be encouraged to attend the trials and other steps of civil matters to the end that the public may understand the judicial process.

13. Civil suits have two sides. It is unfair to report only a portion of the facts presented at a trial, as though they were the only facts. . . Reporting of only one aspect of a case . . may give the public a distorted view. Good coverage requires that the news media follow

> up in a subsequent report with the other side of the story. Incomplete reporting of civil trials or reporting only those cases on which the newsman has had a helpful tip can give a distorted picture . . .

The reporter knew of the plaintiffs' pending actions in other cases, yet she did not hesitate to publish a one-sided article without ever having attended any of the hearings in the plaintiffs' cases. After publication she made no effort to follow up in a subsequent report with the other side. In deviating from these guidelines in the target publication while acknowledging adherence normally, the defendants admit to an important element of actual malice and reckless disregard for truth such as to make summary judgment here improper.

While there can be no proof, it is not improbable that the original dismissal of Plaintiff Camer's public disclosure action against the school district was partially the result of the target publication. Judges are human and understandably impatient when they have a heavy case load. They are more likely

to dismiss an action when they feel that the plaintiff is overly litigous.

C. FREEDOM TO PETITION THE GOVERNMENT WILL BE INHIBITED IN WASHINGTON STATE IF THIS DECISION IS PERMITTED TO STAND.

This decision makes all citizens potentially open to ridicule for pursuing their rights in the legitimate avenue for grievances. While this may effectively unclog the courts, it will also suppress dissent. Government attorneys have much greater access to the media than do citizens such as the plaintiffs. Reporters anxious to curry favor with a government attorney, who constitute a news source, can easily be persuaded to write an unfavorable article about the target of the government attorney's disfavor. Citizens who have little avenue to rebut such articles will be hesitant to expose themselves to such attacks.

Such circumstances can easily arise when the decision of the court is flawed on two counts.

1. The failure to adhere strictly to the constitutional standard for defining a public figure, i.e. discriminating between the area of interest of the article and the area of interest of the plaintiffs and considering the access of plaintiffs to rebut the attack of the article, and

2. The failure to hold the publication to its own standard as a measure of their reckless disregard for truth. If a publisher recognizes the need to establish standards, it must also recognize the need to monitor the adherance to those standards by their staff.

The decision of Greenbelt Coop. Pub. Assn v. Bresler, 398 U.S. 6, 11 (1970) admonishes:

> "the court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review evidence to make certain that those principles have been constitutionally applied."

D. CONCLUSIONS

The first and fourteenth amendment rights of the petitioners and the four and half million residents of Washington state who may be similarly situated are seriously impaired by the state court decision. For this reason as discussed above, the writ of certiorari should be granted.

Respectfully submitted,

Dorothy Camer, pro se

APPENDIX A

DECISION OF DIVISION I OF THE COURT OF APPEALS OF WASHINGTON STATE

[#15814-7-I August 18, 1986]

DOROTHY CAMER and MARGARET COUGHLIN v. SEATTLE POST INTELLIGENCER and SUSAN GOLDBERG

PEKELIS, J. -- Dorothy Camer and Margaret Coughlin appeal the trial court's order of summary judgment dismissing their libel complaint against The Seattle Post-Intelligencer (The Seattle P.I.) and reporter Susan Goldberg. Camer and Coughlin allege that the court erred in dismissing their complaint because they have established a prima facie case of defamation with convincing clarity. We affirm the trial court.

FACTS

The lawsuit arises out of an article written by Susan Goldberg published on June 20, 1982, in The Seattle P.I. The article is entitled "'Nuisance" suits clog the courts," and discusses the effects and implications of pro se liti-

gants on the court system. Several attorneys are quoted: Mike Redman, executive secretary of the Washington Association of Prosecuting Attorneys; Michael Hoge, attorney for the Seattle School District (District); Richard Mann, an assistant city attorney; and Malachy Murphy, an assistant attorney general.

The article first discusses Redman's comments regarding the "constant battle" in the "legal libraries and law offices of the state attorney general, city hall and Seattle School District" against "'nuisance suers.'" Redman referred specifically to a personal restraint petitioner and generally to other prisoners who Redman predicted would file meritless personal restraint petitions. The article continues:

> But Redman has other reasons to worry about nuisance suits, and not just those filed by prisoners.
>
> There are also the suits

> brought by "constitutional crazies," he says. Those are the people who think "flouridated [sic] water is a communist plot to enslave us" or insist the only legal tender is gold and battle in court over the use of paper money.
>
> Then there are suits by those "who are just not operating with a level bubble," Redman says. Those are the people who keep overworked county prosecutors busy responding to charges he says are preposterous on their face.
>
> In all, Redman estimates that state's county prosecutors spend about $750,000 each year, not counting court costs and outside attorneys' fees, to fend off the myriad of frivolous charges brought by constant litigants.
>
> Similar charges are leveled, correctly or not, at Seattle citizens like Dorothy Camer and Margaret Coughlin, who together have filed nearly two dozen separate legal actions against the state, city and Seattle School District.

The article also notes that both women frequently appear pro se, that Camer has never won a case, and that when contracted by Goldberg for comment on their actions, both Camer and Coughlin said

they were too busy with their legal work to be interviewed.

Also quoted are estimates by Hoge and Mann as to the cost of these types of cases and a statement by Murphy that: "'Most of these cases are not legitimate . . . The claims are so off the wall they have to represent themselves.'" The article then avers that nuisance suits contribute to court congestion, a major problem at all three levels of the court system in this state. Finally, Hoge comments on nuisance suits: "'They are time-consuming, expensive and frustrating for me and others involved,' . . . 'but that's the price we pay for a legal system where each citizen has the right to be heard in the courts.'"

On July 20, 1982, Camer and Coughlin filed a complaint for libel, alleging that the article defamed them. On April 20, 1984, the defendants filed a motion

for summary judgment on the grounds that the article did not include statements concerning Camer and Coughlin which were both false and defamatory, that some of the statements complained of were not "'of and concerning'" them, and that the statements complained of were privileged opinion and/or fair comment. The defendants also alleged that Camer and Coughlin were limited public figures and had not shown that the article was published with actual malice. On May 7, 1984, the trial court entered an order granting the motion and dismissing the complaint with prejudice.

The record before the court at the hearing on the motion for summary judgment contained the following facts: Dorothy Camer has been very interested in school district issues. Related to this interest, she has been involved in approximately 10 legal actions regarding

public education, usually appearing pro se. Her claims are generally based on contentions that the education provided to her children was deficient. For example in 1980 she filed a complaint for "educational malpractice," in which she alleged, inter alia, that the District and the State did not provide her children with their constitutional right to a basic education. The complaint also alleged that her son's civil liberties were violated when he was temporarily denied the freedom to play ball on the playground with female classmates. In another suit, she claimed that her son was denied his constitutional rights because he was not given penmanship instruction, he was not informed of an honors math program, and he was not instructed in the complete curriculum for a required Washington State history course. Three times she attempted to

intervene in suits already pending between the District and the State. In addition, Camer filed four complaints against school officials with the Office for Civil Rights of the U. S. Department of Education. In every case, Camer's claims were dismissed.

Camer admits that she has called both print and television reporters to discuss her cases. She has been quoted in the newspapers on various District-related issues and has written "letters to the editor" criticizing the District. On one occasion, she mailed a press release regarding her thoughts on deficiences in the school system and inadequate press coverage thereof.

Margaret Coughlin has been a long-time community activist in the Magnolia area of Seattle. In 1937, she was a member of the State Legislature and in 1971 ran for a position on the Seattle City Council.

More recently, she has been active in environmental, land use, and school-related issues. Her work has been mentioned in many newspaper articles, especially her involvement in calling for an environmental impact statement (EIS) as a prerequiste to the development of Discovery Park. She has regularly written "letters to the editor" and to City and District officials, and she has drafted and circulated petitions on various issues.

From 1974 to 1982, Coughlin filed approximately nine lawsuits involving land use and environmental issues against the City of Seattle (City), the District, and others. An example of one of her suits was an action filed against the City in 1975, alleging that the Board of Adjustment acted arbitrarily and capriciously in reversing a decision denying a variance to a Magnolia-area rest home.

Her complaint was dismissed, and the decision was affirmed on appeal. In 1981, she filed complaints against the District regarding its decision to close certain Magnolia-area elementary schools. These complaints were also dismissed. However, Coughlin's 1974 suit against the City regarding the development of Discovery Park was successful in that the City voluntarily agreed to issue an EIS. Coughlin has brought suits both pro se and with counsel.

At the time she wrote the article, Susan Goldberg was an education reporter for The Seattle P.I. As part of her daily routine, Goldberg would call various District offices to inquire about District activities. Over a period of months, Goldberg learned that there were a number of people, like Camer, who frequently filed cases against the District or other government entities. She

thought that it would be interesting to develop a story about this phenomenon.

In researching the article, Goldberg spoke with people on the District's legal staff, as well as lawyers from the State Attorney General's office and the City Attorney's office. Michael Hoge gave Goldberg a large number of files of the cases brought against the District by Camer and Coughlin. In addition to interviewing Hoge, she talked to Dave Burman, who also handled cases for the District, Mike Redman, Richard Mann, and Malachy Murphy.

Camer recalls that about 6 p.m. on Thursday, June 17, 1982, Goldberg called her about the article. Camer told Goldberg that she was too busy to talk and would not be able to speak with her for at least a week. Goldberg did not give her the impression the article had anything in particular to do with her.

Goldberg states that when she told Camer about the article and asked her opinion as to why she felt she needed to file so many lawsuits, Camer told her she was too busy to talk.

Coughlin recalls that on June 17, Goldberg called to ask her why she was filing lawsuits and told her that she had a deadline for the Sunday paper. Coughlin stated that she was typing "an important legal paper" and would have to get back to her later. Coughlin did not want to be quoted because she was hesitant to comment on a pending case.

ANALYSIS

In reviewing the decision to grant summary judgment, this court engages in the same inquiry as did the trial court. Wilson v. Steinbach, 98 Wn2d 434, 437, 656 P.2d 1030 (1982); Styner v. England, 40 Wn.App. 386, 388, 699 P.2d 234 (1985). In defamation cases, as in other cases, a

motion for summary judgment under CR 56(c) should be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. The evidence must be considered in the light most favorable to the nonmoving party. Wilson, at 437; Rye v. Seattle Times Co., 37 Wn.App. 45, 51-52, 678 P.2d 1282 (1984), cert.denied 105 S.Ct. 593 (1984). In addition, in the area of defamation, there are other considerations.

> In the First Amendment area, summary procedures are even more essential. For the stake here, if harassment succeeds, is free debate . . Unless persons, including newspapers, desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors. And to this extent debate on public issues and the conduct of public officials will become less uninhibited,

> less robust, and less wide-open, for self-censorship affecting the whole public is "hardly less virulent for being privately administered."

(Citations omitted.) Mark v. Seattle Times, 96 Wn2d 473, 484-85, 635 P.2d 1081 (1981), cert. denied, 457 U.S. 1124 (1982) (quoting Washington Post Co. v. Keogh, 365 F.2d 965, 968 (D.C. Cir. 1966), 20 A.L.R.3d 972 (1968), cert. denied, 385 U.S. 1011 (1967)); Rye, at 53.

Thus, a defamation plaintiff resisting a defense motion for summary judgment by a media defendant must establish a prima facie case as to each element of defamation, i.e., falsity, an unprivileged communication, fault, and damages, by evidence of convincing clarity. Mark, at

486-87;[1] see Dunlap v Wayne, 105 Wn.2d 529, 533-34, 716 P.2d 842 (1986). In addition, the plaintiff has the burden of proving that the communication made of and concerning him or her. Sims v. KIRO, Inc., 20 Wn.App. 229, 233, 580 P.2d 642 (1978), cert. denied, 441 U.S. 945 (1979).

In their reply brief, Camer and Coughlin allege that because this case involves their First Amendment right of access to the courts, this burden should not apply to them. Rather, it should be the defendants' burden of establishing that there were no genuine issues of material fact. They cite no authority

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1The United States Supreme Court adheres to this standard in Anderson v. Liberty Lobby, Inc., 54 U.S.L.W. 4755, 4759, 4760 (U.S. June 25, 1986), which holds that in a libel suit brought by a public figure, a court ruling on a defense motion for summary judgment must decide whether the evidence presented is such that a reasonable jury might find the plaintiff has established actual malice with convincing clarity.

for this proposition. Contentions unsupported by argument or citation of authority will not be considered on appeal. RAP 10.3(a)(5); Top Line Equip. Co. v. National Auction Serv., 32 Wn.App. 685, 692, 649 P.2d 165 (1982).

a. Of and concerning another.

Plaintiff must submit convincingly clear proof of his or her identity as a target of an allegedly libelous statement to withstand a defense motion for summary judgment. Sims, at 234. The identification of the one defamed must be certain and apparent from the words themselves. One cannot by implication identify oneself as the target of an alleged libel if the allegedly libelous statement does not point to him or her. It is not necessary that the plaintiff be mentioned by name in order to recover damages, but it is sufficient if the audience will conclude from a perusal of the article that the

plaintiff is the one against whom the publication is aimed. Sims, at 234.

In addition, in determining whether a publication is defamatory, it must be read as a whole and not in part or parts detached from the main body. Gaffney v. Scott Pub'g Co., 35 Wn.2d 272, 277, 212 P.2d 817 (1949); Sims, at 234. Camer and Coughlin allege that when the article is read as a whole, containing as it does statements such as the following, it is defamatory:

(1) "'Nuisance' suits clog the courts"
(2) "The cases have become something of a joke."
(3) "'What these people do is hammer us with absolute nonsense you have to respond to'."
(4) "'Constitutional crazies'"
(5) "There are also the suits brought by 'constitutional crazies'."
(6) "Then there are suits by those 'who are just not operating with a level bubble'."
(7) "[C]harges [that] . . . are preposterous on their face."
(8) "'The claims are so off the wall they have to represent themselves.'"

They particularly contend that the article contains two false and defamatory inferences about them: first, that they are mentally incompetent; and second, that the cases which they filed are frivolous and nuisances.

With regard to their first contention, very few of the statements complained of when read in context even conceivably refer to Camer and Coughlin. Redman's comments about "constitutional crazies" as well as suits by those "not operating with a level bubble" are colloquial hyberbole and create an image of zealots, not incompetents. Furthermore, these statements are sufficiently separate from the portions of the article about Camer and Coughlin so as to dispel any inference that it is of and concerning them.

However, with regard to their second contention, the average reader, knowing little or nothing about the two women

except for what they have read in the article, could reasonably conclude that plaintiffs are viewed as bring frivolous or nuisance lawsuits.

> The test is not whom the story intends to name but who a part of the audience may reasonably think is named - "not who is meant but who is hit," as one court put it.

Sims, at 234 (quoting P. Ashley, Say It Safely 30 (3d ed. 1966)). We agree that there is an issue of fact as to whether they are implicated in the class of nuisance suers.

b. Falsity

Although we cannot say as a matter of law that the article clearly excludes Camer and Coughlin from the group referred to as "nuisance suers," the plaintiffs also must show with convincing clarity that the statements 'of and conerning" them are false. Plaintiffs recognize that not every misstatement of

fact, however, insignificant, is defamatory and thus actionable. Rather the law requires that the substance of the statement makes substantial danger to reputation apparent. Mark, at 493; Taskett v. KING Broadcasting Co., 86 Wn.2d 439, 445, 546 P.2d 81 (1976)

> It is now generally agreed that a defamation defendant need not prove the literal truth of every claimed defamatory statement. W. Prosser, Torts 798 (4th ed. 1971). A defendant need only show that the statement is substantially true or that the gist of the story, the portion that carries the "sting", is true. W. Prosser, supra.
>
> Mark, at 494.[2]

Defendants argue, however, that the portion of the article carrying the

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[2]In the recent case Philadelphia Newspapers, Inc. v. Hepps, 54 U.S.L.W. 4373 (U.S. April 21, 1986), the Court held that the plaintiff has the burden of proving falsity, stating "where a newspaper publishes speech of public concern, a private-figure plaintiff cannot recover damages without also showing that the statements at issue are false."

"sting" regarding Camer and Coughlin constitutes mere opinion, and not fact. Defendants argue that as a matter of law the opinions cannot be proven false and thus cannot be defamatory.

c. An unprivileged communication.

While communication of a false fact may not be privileged expressions of opinion are protected under the First Amendment and thus are not actionable:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

Gertz v Robert Welch, Inc., 418 U.S. 323, 41 L.Ed.2d. 789, 94 S.CT. 2997, 3007 (1974). Restatement (Second) of Torts, section 566 at 170 (1977) provides:

> A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is

> actionable only if it implies the allegation of undisclosed defamatory facts as the basis of the opinion.

The determination of whether a communication is one of fact or opinion is a question of law for the court. Benjamin v. Cowles Publ'g Co., 37 W.App. 916, 922, 684 P.2d 739 (1984). In making this determination, the court should consider:

> (1) the entire article and not merely a particular phrase or sentence; (2) the degree to which th truth or falsity of a statement can be objectively determined without resort to speculation; and (3) whether ordinary persons hearing or reading the; matter perceive the statement as an expression of opinion rather than a statement of fact.

(Citations omitted.) Benjamin, at 923.

In considering the article as a whole, it is evident that the tone is one of opinion. Virtually every statement cited as defamatory by Camer and Coughlin is an

opinion of one of the quoted attorneys that the lawsuits are frivolous and a nuisance. One cannot determine the truth or falsity of statements such as "[t]he cases have become something of a joke" or "[w]hat these people do is hammer ;us with absolute nonsense you have to respond to". Nor do the statements that the suits are "frivolous" and constitute a "nuisance" imply that the allegation of undisclosed defamatory facts as their basis. Rather, it is apparent to the ordinary reader that the quoted attorneys are irritated by their increased work-load. Their lack of objectivity and the absence of objective fact is inherent in their conclusions regarding the plaintiffs. This is aptly pointed out by the article's author when she states in her first reference to the plaintiffs:

> Similar charges [of bringing frivolous lawsuits] are leveled, correctly or not, at

> Seattle citizens like Dorothy Camer and Margaret Couughlin, who together have filed nearly two dozen separate legal actions against the state, city and Seattle School District.

The use of the phrase "correctly or not" emphasizes the point that the criticism of the plaintiffs is a matter of opinion.

We note that similar, if not more disparaging statemtns in other contexts have been upheld as constitutionally protected opinion. For example, in Spelson v. CBS, Inc., 581 F. Supp. 1195 (N.D. Ill. 1984), aff'd, 757 F.2d 1291 (1985), the court found that in the context of a series of news broadcasts entitled "'Cashing in on Cancer,'" statements such as "'Spelson had over-stepped the bounds of his training,'" Spelson's practices were "'unethical, unprofessional, inhuman and totally worthless,'" Spelson's behavior "'really

borders on the criminal,'" and other statements regarding "'cancer con-artists'" and "'cancer quacks'" were all privileged as statements of opinion. Spelson, at 1203-05. Likewise, in Stuart v. Gambling Times, Inc., 534 F.Supp. 170 (D.N.J. 1982), the court held a statement to be opinion, and thus not actionable, that the publication and sale of a book was "the [no.] 1 fraud ever perpetrated upon the gambling reader.'" Stuart, at 171, 172.

Even apparent statements of fact may assume the character of opinions, and thus be privileged, when made in "public debate, heated labor dispute, or other circumstances in which an 'audience may anticipate efforts by the parties to persuade others to their positions by use of epithets, fiery rhetoric or hyperbole. . . '" Information Control Corp. v. Genesis One Compute Corp., 611 F.2d 781,

784 (9th Cir. 1980) (quoting Gregory v. McDonnell Doughlas Corp., 131 Cap. Rptr. 641, 643, 522 P.2d 425, 427 (1976). In other words, both the immediate as well as broader social context in which the statements occur should be considered. Ollman v. Evan, 750 F.2d 970, 982-84 (D.C. Cir. 1984). Clearly, given the public's concern both with court congestion and the use of taxpayer funds, the article raises issues which result in heated and often emotional discussion. Thus, while the article may characterize Camer and Coughlin's suits as frivolous and nuisances, this is undoubtedly opinion and therefore not actionable.3

3Because we find that the statements complained of are privileged opinions, we need not address the defendants' claim that the opinions expressed in the article are privileged under the fair comment doctrine.

d. Fault.

The degree of fault necessary to make out a prima facie case of defamation depends on whether the plaintiff is a private individual or a public figure or a public official. If the plaintiff is a private individual, a negligence standard of fault applies. Bender v. Seattle, 99 Wn.2d 582, 599, 664 P.2d 492 (1983); Taskett, at 445. Otherwise, the plaintiff must prove "actual malice, i.e., knowledge of falsity or reckless disregard of falsity, to recover." Gertz, at 3008; Bender, at 599. A person is not consdiered a public figure solely because he or she has sought relief through the courts or is involved in a controversy which is newsworthy. To be considered a public figure, courts usually require the plaintiff to voluntarily seek to influence the resolution of public issues. Bender, at 600.

> [The] designation [as a public figure] may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. . . . we would not lightly assume that a citizen's participation in community and professional affairs render him a public figure for all purposes . . . It is preferable to reduce the public-figure question to a more meaningful context ;by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.

Gertz, at 3012-13; Exner v. American Med. Ass'n, 123 Wn.App. 215, 221. 223-24, 529 P.2d 863, 75 A.L.R.3d 602 (1974). In Exner, a doctor brought a defamation suit for the publication of an article on fluoridation. The court found that the doctor was a public figure in regard to the limited area of fluoridation becasue

he abandoned his anonymity, assumed leadership, and attempted to influence the outcome of the issue. The court therefore, required him to rpove that the defendants wrote with malice. Exner, at 224.

In their briefs, Camer and Coughlin argue that even if they were public figures in the areas of environmental and zoning issues and public education, they are not public figures in the area of court overcrowding.4 There is no clear boundary between the subjects of their lawsuits and the subject of the article. In addition, like Dr. Exner, there were ways in which they voluntarily sought to influence the resolution of public issues, e.g., a press release, "letters to the editor," frequent participation in public meetings and hearings. We,

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4We note that at oral argument Coughlin admitted to being a limited public figure.

therefore, find them to be limited public figures, and as such they must establish with convincing clarity that Goldberg and The Seattle P.I. acted with actual malice in publishing the article.

Camer and Coughlin allege that Goldberg acted malicioulsy because she did not give them an effective opportunity to respond to the comments in the article. However, the evidence shows that Goldberg made a good faith effort to talk to them. They also allege that she acted maliciously because Michael Hoge and Richard Mann have been hostile to Coughlin in the course of litigation. The use of hostile sources, even when that fact is known to the reporter, is insufficient to establish a prima facie case of malice by convincing clarity. Ryan, at 54. Indeed, there is insufficient evidence here to establish even negligence. All of those

quoted have stated that Goldberg's account of their comments was accurate.

d. Damages.

Finally, Camer and Coughlin must establish that they were damaged in some way by the publication of the article. Rather than asserting how they were damaged, they appear to contend that because they have established the other elements of defamation, it naturally follows that they have also established damages. Alternatively, they appear to argue that the issue of damages is a jury question and not one "within the function of the trial court to determine." Clearly, this is not the law when a defamation defendant brings a motion for summary judgment. To avoid dismissal, the plaintiff must establish all elements with convincing clarity. Mark v. Seattle Times, 96 Wn.2d 473,. 486, 635 P.2d 1081

(1981), cert. denied, 457 U.S. 1124 (1982). This they have failed to do.

In attempting to establish damages, Camer and Coughlin claim that the article exposed them to contempt and ridicule and deprived them of public confidence. In addition, they argue that as a result of the article's publication they have been denied their right of access to the courts. They offer no evidence in support of either of these claims. A mere conclusory statement not supported by specific facts which demonstrate that there is a genuine issue is insufficient to avoid summary judgment. CR 56(3); Mark, at 490.

In summary, while certain aspects of the article may be "of and concerning" Camer and Coughlin, we hold that they have not established a prima facies case by convincing clarity that the defendants acted with malice or that they were

damaged. We also hold that the article is not defamatory because it constitutes privileged opinion.

We affirm the trial court's order granting the defendants' motion for summary judgment.

APPENDIX B

ORDER DENYING MOTION FOR RECONSIDERATION

DIVISION I OF THE WASHINGTON COURT OF APPEALS

[#15814-7-I September 18, 1986]

DOROTHY CAMER and MARGARET COUGHLIN v.

SEATTLE POST INTELLIGENCER and SUSAN GOLDBERG

Appellant, Dorothy Camer, having filed a motion for reconsideration herein, and the court havinng determined that said motion should be denied; Now, therefore, it is hereby

ORDERED that the motion of Appellant, Dorothy Camer, be, and the same hereby is, denied.

DATED this 18th day of September, 1986.

Coleman, J

Presiding Judge

APPENDIX C

THE SUPREME COURT OF WASHINGTON

Order on January 6, 1987 25700-X-129

Petition for Review Calendar

Department I of the Court having considered the following Petitions for Review on its January 6, 1987, Petition for Review Calendar; Now, therefore, it is hereby Ordered:

A. The following Petitions for Review are Denied:

Division I:

State v. Gary Sather
Court of Appeals No. 14314-0-I
Supreme Court No. 53231-1

Velda White v. Alton White Jr.
Court of Appeals No. 14380-8-I
Supreme Court No. 53251-6

Dorothy Camer and Margaret Coughlin v. The Seattle Post-Intelligencer and Susan Goldberg
Court of Appeals No. 15814-7-I
Supreme Court No. 53252-4

Rosalie Codd v. Stevens Pass, Inc.
Court of Appeals No. 14581-9-I
Supreme Court No. 53279-1

In re the Marriage of Barbara June Gehrke and Ronald A. Gehrke
Court of Appeals No. 17222-1-I
Supreme Court No. 53284-2

State v. Richard P. Beckenbaugh
Court of Appeals No. 16790-1-I
Supreme Court No. 53299-7

State v. Jesus Avitia Enriquez
Court of Appeals No. 15447-8-I
Supreme Court No. 53311-3

State v. Perry Michael White and Timothy Kevin Shadduck
Court of Appeals No. 15009-0-I
Supreme Court No. 53315-6

Division II:

Gary Austin and William Henry v. City of Oakville, et al
Court of Appeals No. 9211-5-II
Supreme Court No. 53253-2

State v. Robert William Stirton
Court of Appeals No. 7056-1-II
Supreme Court No. 53293-1

State v. Paul W. Sanchez
Court of Appeals No. 7375-7-II
Supreme Court No. 53295-8

State v. Kim Sherwood Kenyon
Court of Appeals No. 7887-2-II
Supreme Court No. 53300-8

Jack Keihn Jr. et al v. Nelsen's Tire Co.
Court of Appeals No. 7480-0-II
Supreme Court No. 53323-7

Division III:

State v. Spencer Nobel Jones
Court of Appeals No. 4479-3-III
Supreme Court No. 53185-4

Estate of Fern F. Lonneker and Baker Boyer National Bank v. Robert F. Lonneker, et al
Court of Appeals No. 6690-8-III
Supreme Court No. 53271-1

Plumbers and Steamfitters Union Local 598 v. Washington Public Power Supply System
Court of Appeals No. 7068-9-III
Supreme Court No. 53318-1

State v. Miguel Alvarez a/k/a Miguel Alvarz Solozano
Court of Appeals No. 6832-3-III
Supreme Court No. 53320-2

State v. Javier Mf Lopez
Court of Appeals No. 7270-3-III
Supreme Court No. 53325-3

B. The following Petitions for Review were granted.

Division I:

Clam Shack of America, Inc. v. Skagit Co. et al
Court of Appeals No. 15081-2-I
Supreme Court No. 53228-1

Joe E. Burnett and Joyce Barnett v. Buchan Baking Co.
Court of Appeals No. 14350-6-I
Supreme Court No. 53290-7

Personal Restraint Petition of Terry Eugene Mercer
Court of Appeals No. 16238-1-I
Supreme Court No. 53334-2

Division II:

State v. Leslie Scott Knighten
Court of Appeals No. 7889-9-II
Supreme Court No. 53302-4

Division III:

State v. Robert Ray Bebb
Court of Appeals No. 5839-5-III
Supreme Court No. 53275-3

D. The following Petitions for Review are deferred pending final determination of State v. Hodgson, Supreme Court No. 53209-5:

Division I:

State v. Charles H. Bruno
Court of Appeals No. 15226-2-I
Supreme Court No. 53248-6

State v. Jack Menpa
Court of Appeals No. 15448-6-I
Supreme Court No. 53249-4

Dated at Olympia, Washington, this 6th day of January 1987.

James Dolliver
Presiding Judge

86 1831

No. _____

Supreme Court, U.S.
FILED
MAY 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

October Term, 1987

DOROTHY CAMER,

Petitioner,

v.

SEATTLE POST-INTELLIGENCER
and SUSAN GOLDBERG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO DIVISION I OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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No. _____

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Counsel for Respondents

* Counsel of Record

ISSUES PRESENTED

1. Under Washington law, was Plaintiff's defamation action properly dismissed, where Plaintiff failed to show by clear and convincing evidence that statements characterizing her various legal actions against the public school district as "frivolous" or "nuisance" suits (a) were defamatory, (b) were false, (c) were unprivileged communications, (d) were published with the requisite degree of fault, and (e) caused damage to Plaintiff?

2. Under Washington law, could certain statements in the Article such as those concerning "constitutional crazies," which were not directed at plaintiff personally, be read by ordinary readers to imply that plaintiff is in fact mentally incompetent?

3. Are statements criticizing "constant litigants" for repeatedly filing lawsuits against governmental entities statements of opinion protected by the Constitutions of the United States and the State of Washington?

4. Plaintiff involved herself in numerous legal actions, filed administrative complaints on public school issues, repeatedly spoke out on such issues, and sought publicity for her lawsuits and positions. Is she a "public figure" for the purpose of discussing her legal actions and administrative complaints?

5. Has plaintiff submitted clear and convincing evidence that the subject Article was published with "actual malice"?

PARTIES TO THE PROCEEDINGS

Dorothy Camer and Margaret Coughlin were appellants below. Only Ms. Camer is a Petitioner before this Court.

Seattle Post-Intelligencer, a division of The Hearst Corporation, and Susan Goldberg were the respondents below and they remain so before this Court. As required by Sup. Ct. R. 28.1, a list of the affiliates of Seattle Post-Intelligencer, all subsidiaries or divisions of The Hearst Corporation, is at Appendix C.

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B. Plaintiff has not offered this Court any reason why this decision from an intermediate state court of appeals should be granted a writ of certiorari 9

II. Plaintiff has failed to prove any of the substantive elements of defamation 11

A. The lower court properly held that only one statement was even arguably "of and concerning" plaintiff 12

B. The lower court properly held that plaintiff had failed to show that any false statements had been made about her 15

C. Plaintiff has failed to demonstrate why the opinions stated in the article should not be privileged 16

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

DOROTHY CAMER,

Petitioner,

v.

SEATTLE POST-INTELLIGENCER

and SUSAN GOLDBERG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO DIVISION I OF THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

JURISDICTION

The Respondents Seattle Post-Intelligencer and Susan Goldberg respectfully request that this Court deny the petition for writ of certiorari seeking review of the opinion of Division One of the Court of Appeals of the State of Washington (the "Petition").

That opinion, entitled Camer v. Seattle Post-Intelligencer, is reported at 45 Wash. App. 29, 723 P.2d 1195 (1986). For the Court's convenience, we will cite to the opinion in the official state reporter, as well as to the pages in the Appendix to the Petition. (cited hereinafter as "A__").

Because the decision below rests on independent and adequate state grounds, this Court is without jurisdiction to hear this case. Reversal of the court of appeals on every question raised by Petitioner would not result in a different disposition of this case.

Petitioner brought a defamation action under Washington State law. To prevail, Petitioner had to establish a prima facie case as to each of four elements of defamation: falsity, unprivileged communication, fault, and damages. The court below concluded that

Petitioner had failed to establish any of the four elements. The court's conclusion, as it relates to the elements of falsity and damages, is based exclusively on Washington state law. Therefore, even with reversal on the federal issues raised by the Petition, Petitioner's defamation action would still be lacking two elements required under Washington law and, thus, would still be properly dismissed.

The Washington Supreme Court denied review of the Court of Appeals' decision on January 6, 1987. Appendix D. It is from that date that the 90-day period of 28 U.S.C. § 2101(c) began to run. Sup. Ct. R. 20.4.

STATEMENT OF THE CASE

This defamation action arises from an article written and published by the Respondents Susan Goldberg and Seattle Post-Intelligencer (the "Defendants") in 1982 (the "Article"). The full text of the Article is set forth in Appendix A to this Brief. Defendants incorporate by reference the facts as stated in the opinion below. Camer v. Seattle Post-Intelligencer, 45 Wash. App. 29, 31-35; A1-A11.

Nevertheless, Petitioner Dorothy Camer's (the "Plaintiff") Statement of Facts contains inaccuracies and omissions that require correction. Petition at 3.

Plaintiff would have this Court believe that, at the time the Article was published, she had been involved in only three cases concerning the quality of public schools. Petition at 6.

While Plaintiff had filed only three lawsuits against the Seattle School District, it was undisputed at the summary judgment hearing that Plaintiff had also attempted to intervene in three other suits "already pending between the District and the State. In addition, [Plaintiff] Camer filed four complaints against school officials with the Office for Civil Rights of the United States Department of Education." Camer, 45 Wash. App. at 33; A6-A7.

Plaintiff also declares that Defendant Seattle Post-Intelligencer (the "P-I") had stated its adherence "to the Associated Press Style Manual and the Washington State Bench-Bar-Press Guidelines as standards," Petition at 14, and argues that those publications, therefore, establish a standard of care. Petition at 25, 28. While the alleged "binding effect" of those

publications is discussed below, see infra at 27-28, Plaintiff misrepresents the P-I's answer to an interrogatory, requesting the identity of any "published legal or ethical guidelines or standards used or recommended for use by P-I employees." Plaintiff's First Interrogatories to Defendant Seattle Post-Intelligencer and Answers Thereto, at 2. Appendix B. The P-I did state that, with the recommendation of its management, certain listed publications were used by its employees. The answer did not indicate that the P-I regarded any of those publications to be either legal or ethical standards.

Finally, Plaintiff incorrectly states that the Washington Supreme Court affirmed the Court of Appeals' decision. Petition at 2. That court denied her petition for review of the appellate court's opinion. Order Granting Motion

for Extension of Time to File Petition for Review and Denying Petition for Review on the Merits (entered January 6, 1987). Appendix D.

ARGUMENT

I. Plaintiff's petition suffers from two substantial defects.

A. The appellate court's decision is based on independent and adequate state grounds.

Because the decision of the court below is supported by an independent and adequate state ground, this Court lacks jurisdiction to review that decision. See, e.g., 16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction § 4019. Where there exists state grounds independent of the federal questions raised, this Court does not accept review "largely for the reason that decisions on the federal questions . . . would amount to

no more than advisory opinions." Uhler v. AFL-CIO, 468 U.S. 1310, 1311 (1984) (Rehnquist, J., in Chambers) (citations omitted).

Plaintiff, here, seeks review of the lower court's conclusions that she was a limited public figure and that the allegedly defamatory statements were privileged. Plaintiff's third issue on appeal is so novel that it does not appear to fit within any analysis of defamation. That issue is addressed infra at 29-32. Plaintiff, however, failed to convince the court below that the allegedly defamatory statements were false, Camer, 45 Wash. App. at 38-39; A18-A20, or that Plaintiff suffered any damage as a result of those statements having been made. Id. at 43-44; A30-A32. Hence, even if she could prevail on all the federal questions she does raise, Plaintiff still could not

show that review by this Court would change the result below.

B. Plaintiff has not offered this Court any reason why this decision from an intermediate state Court of Appeals should be granted a writ of certiorari.

This petition for certiorari is taken from a decision of an intermediate state court of appeals, after the highest state court declined to review the decision. See Appendix D. Plaintiff has offered this Court no compelling reason for expending its scarce resources on this particular decision.

Furthermore, Plaintiff has failed to demonstrate that the decision conflicts with any opinion of this Court or of any federal court of appeals. Sup. Ct. R. 17.1. Nor does Plaintiff raise any "important question of federal law which has not been but should be, settled by this Court." Sup. Ct. R. 17.1(c).

The three issues which Plaintiff would have this Court consider include: (1) whether the trial court properly concluded that Plaintiff was a limited public figure for purposes of an article on frivolous lawsuits against public agencies, by virtue of her extensive litigation of public school issues; (2) whether Defendants' alleged deviation (never found by the trial court) from local voluntary guidelines for news publishers constitutes "actual malice" for purposes of Plaintiff's defamation claim; and (3) whether reporting the opinions of government attorneys concerning citizen lawsuits chilled Plaintiff's exercise of her constitutional right to petition government through the courts.

Plaintiff, however, fails to show where the court below has deviated from this Court's rulings on First Amendment

law. Instead it is Plaintiff's own understanding of the First Amendment that makes a radical departure from traditional opinions concerning free speech rights.

II. Plaintiff has failed to prove any of the substantive elements of defamation.

Plaintiff has failed to establish any of the elements of a defamation claim. Under Washington State law,

> [A] defamation plaintiff resisting a defense motion for summary judgment by a media defendant must establish a prima facie case as to each element of defamation, i.e., falsity, an unprivileged communication, fault, and damages by evidence of convincing clarity. In addition, the plaintiff has the burden of proving that the communication was made of and concerning him or her.

Camer, 45 Wash. App. at 36; A13-A14 (citations omitted). The court below held that Plaintiff had failed to satisfy any of those elements.

A. The lower court properly held that only one statement was even arguably "of and concerning" plaintiff.

Plaintiff apparently continues to contend that the entire Article is of and concerning the Plaintiff. Petition at 23. This is too narrow a characterization of the Article's subject. After carefully reviewing a number of statements Plaintiff had claimed were false and defamatory, the appellate court only concluded that there remained "an issue of fact as to whether [the Plaintiff is] implicated in the class of 'nuisance suers.'" Camer, 45 Wash. App. at 38; A18. The appellate court clearly explained why other statements in the Article, including the reference to "constitutional crazies" did not apply to Plaintiff. 45 Wash. App. at 36-38; A15-A18. Plaintiff has not explained why every statement in the Article

concerning the various types of litigants should be construed as a statement about her.

Plaintiff next argues that the appellate court's opinion is inconsistent with established Washington law. Petition at 23 (citing Sims v. KIRO, Inc., 20 Wash. App. 229, 580 P.2d 642 (1978), cert. denied, 441 U.S. 945 (1979); Benjamin v. Cowles Publishing Co., 37 Wash. App. 916, 684 P.2d 739 (1984); McNair v. Hearst Corp., 794 F.2d 1309 (9th Cir. 1974)).

Plaintiff never explains why this Court should concern itself with questions of state law. Furthermore, only one of the above cited cases, Sims v. KIRO, Inc., 20 Wash. App. 229, even considered the question of what constitutes a statement "of and concerning" the Plaintiff. In Sims, the plaintiff alleged defamation because his

merchandise, as well as that of others, had been shown in a television broadcast largely critical of the sale of bicentennial memorabilia. In concluding the plaintiff had failed to show he was the subject of the critical statements, the court reasoned that an individual's mere membership in the group being discussed provides insufficient basis for asserting that the individual is the subject of the allegedly defamatory remarks. Sims, 20 Wash. App. at 229. Here, Plaintiff was described as being a member of one of a number sub-groups of constant litigants discussed in the Article and is, thus, even less the subject of the alleged defamatory remark than was the Sims plaintiff. Appendix A, ¶¶ 16-20.

B. The lower Court properly concluded that plaintiff had failed to show that any false statements had been made about her.

While the statements linking Plaintiff with the group of "nuisance suers" were arguably "of and concerning" her, Plaintiff failed to carry her burden of showing with convincing clarity that those statements were false. 45 Wash. App. at 38; A18. It was an impossible burden. The contention that Plaintiff has filed "frivolous suits" could not be objectively verified as "true" or "false."

A determination of whether a claim is "frivolous" requires (1) an assessment of the legal principles and precedents that apply to the claim, and (2) a weighing of the importance of the rights asserted by the plaintiff. Because reasonable minds can differ on either of those basic considerations, they can

also differ on whether a particular claim, dismissed by a court or other tribunal, was frivolous. Because reasonable minds, presented with the same data, could differ, the verifiability required for a "true or false" determination was absent.

C. Plaintiff has failed to demonstrate why the opinions stated in the article should not be privileged.

The appellate court held that the Article's characterization of Plaintiff's suits as "frivolous and nuisances" was "undoubtedly opinion and therefore not actionable." Camer, 45 Wash. App. at 41; A25. Plaintiff appears to offer three arguments for reversing that holding: (1) the First Amendment affords less protection to the reporting of an interviewee's opinion than to the reporting of one's own opinion, Petition at 23-24; (2) the

First Amendment affords less protection to statements not expressed in "heated debate or even in court hearings," Petition at 24-25; (3) the Defendants have a duty to tell both ides of the story, Petition at 25-26.

Plaintiff can cite no authority to support her first argument. None of the authorities she does cite stands for the proposition that a report of another's opinion is accorded less protection than a statement of one's own opinion. For example, Spelson v. CBS, Inc., 581 F. Supp 1195 (N.D. Ill. 1984), aff'd, 757 F.2d 1291 (7th Cir. 1985) (Petition at 23), involved facts analogous to those before this Court. A chiropractor sued a television network for defamation in connection with a series of broadcasts on individuals, including the plaintiff, engaged in "cancer quackery."

The court below reviewed several of the statements, many offered by interviewees, concerning Spelson's cancer treatments. Camer, 45 Wash. App. at 40-41; A23-A24 (citing Spelson, 581 F. Supp. at 1203-05). The Spelson court concluded that the statements were privileged as opinion. The court further observed that the standard for liability remained the same regardless of whether the statement was that of the reporter or the interviewer. Spelson, 581 F. Supp. at 1203-04 n.7. Moreover, the Spelson court never predicated that conclusion on the scope or intensity of the reporter's investigation.

Plaintiff's citations to other purported authority for her proposition are equally capricious. More importantly, Plaintiff's argument that stating another's opinion is less privileged than stating one's own, is fundamentally

absurd. The First Amendment symbolizes and protects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). Presently, media technologies and institutions can provide rapid transmittal of one's ideas on any public issue. Nevertheless, public debate could hardly be robust if, as Plaintiff would have it, one's ideas could not be repeated by another and still remain privileged. For all but a few who have special access to the various media, the privilege to express oneself would be reduced to a futile and meaningless exercise. One could seek to affect only the smallest of the various local, state, and national communities in which one lives.

Finally, to the extent she concedes the privilege exists at all, Plaintiff appears to restrict the privilege to opinions appearing in editorial columns. Petition at 24. Plaintiff confuses the indicia of opinion with opinion itself. That a statement appears in an editorial column is merely one factor suggesting that the statement is an opinion. The court below, however, pointed to several other indicia to show that the statements at issue were opinions. Camer, 45 Wn. App. at 40; A21-A22.

After considering the entire article, the verifiability of the statement, and the likelihood that an ordinary individual would perceive the statement as an expression of opinion, Camer, 45 Wash. App. at 39-40; A21, the court below correctly held that the statements that Plaintiff's suits were "frivolous"

and constituted a "nuisance" were "undoubtedly opinion." Id. at 41; A25.

Plaintiff's second argument, that those statements could not be privileged as opinion because they were not expressed "in heated debate or even in court hearings," implies a distinction without a difference. Petition at 25 (quoting Information Control Corp. v. Genesis One Computer Corp., 611 F.2d 781, (9th Cir. 1980)). Speech concerning matters of public importance is not accorded less protection simply because it does not occur in "heated debate."

Again, an examination of Plaintiff's own authority for her statement reveals its absurdity. Plaintiff fails to acknowledge that the rest of the sentence from which she quotes identifies a number of contexts, including "public debate, heated labor dispute or other circumstances" where "even apparent

statements of fact may assume the character of opinion . . ." Information Control, 611 F.2d at 784 (emphasis added).

The controversy over "nuisance" or "frivolous" suits is the subject of considerable public debate. As the court below stated, "given the public's concern both with court congestion and the use of taxpayer funds, the [A]rticle raises issues which result in heated and often emotional discussions." Camer, 45 Wash. App. at 41; A25. Plaintiff's own cited authority, as well as sound public policy, militate against her argument here.

Plaintiff's third argument, that defendants must present both sides of the issue, is equally without merit. Here Plaintiff's contention ignores both the inherently subjective nature of opinion and the purpose for protecting

opinions as privileged speech--namely "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." New York Times, 376 U.S. at 269.

Given these fundamental principles of free speech, it is understandable that Plaintiff can find no authority to cite for her proposition that a publication must include all opinions in order to be published. Plaintiff's argument is also untenable in light of her refusal to talk to the P-I's reporter prior to the publication of the Article. Camer, 45 Wash. App. at 34-35; A10-A11. Denied the opportunity to present anything of Plaintiff's "side" of the story, the reporter made clear in the Article that she had not been able to elicit comments from the Plaintiff, thereby giving notice that the Article

was unavoidably one-sided. Appendix A, ¶ 23.

D. Plaintiff failed to establish defendant's fault under any standard of care.

Even though the appellate court expressly stated that Plaintiff had produced "insufficient evidence here to establish even negligence," 45 Wash. App at 43; A29, Plaintiff devotes the bulk of her argument to her status as a "limited public figure," and to the "Bench-Bar-Press Principles and Guidelines" as a standard for "actual malice." Petition at 16-22, 25-29.

Notwithstanding (1) her involvement in ten legal actions with the school district within three years, (2) her having "called both print and television reporters to discuss her cases," 45 Wash. App. at 33; A7, and (3) her having even issued a press release at

one point, id. at 43; A28-A29; Camer Dep., CP Subfile 40, Attch. A at 69, Plaintiff denies that she has thrust herself "into the area of interest in the article." Petition at 19.

Defendant concedes Plaintiff's statement that she has not sought "to resolve the issue of frivolous cases or clogged courts." Petition at 17. Nevertheless, simply because Plaintiff has not spoken on the subject of frivolous suits does not insulate from public scrutiny her self-described method of "petition[ing] the government by filing court actions in the [area of her] interest." Petition at 20. As the appellate court pointed out, there "is no clear boundary between the subjects of [Plaintiff's] lawsuits and the subject of the [A]rticle." Camer, 45 Wash. App. at 42-43; A28. Plaintiff distinguished herself from other

concerned citizens by repeatedly taking legal action to attempt to resolve public issues. In considering the prevalence of citizen lawsuits and their effect on government agencies, the methods of "constant litigants" such as Plaintiff are a subject of public interest. The court also based its public figure determination on activities by Plaintiff which extended beyond the scope of litigation itself. Id. at 43; A28-A29; see also, id. at 33; A7.

Plaintiff argues that local Bench-Bar-Press guidelines, which she admits "are voluntary," should serve as a standard for "actual malice." Petition at 28. Plaintiff cites no authority for her assertion. A review of quotations from the publication indicates how difficult it would be to employ such inspirational maxims and general observations as legal standards. Petition at 26-28,

For a statement to have been made with "actual malice," it must be made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, 376 U.S. at 279-80. Plaintiff does not attempt to explain how the "Guidelines for Reporting of Civil Proceedings" can possibly aid the determination of whether a defendant published a statement with reckless disregard for its truth or falsity. Petition at 27-28. Instead, she alleges the Article was "one-sided." A lack of objectivity does not establish actual malice. Brown v. Herald Co., 698 F.2d 949, 951 (8th Cir. 1983) (per curiam); Cohn v. National Broadcasting Co., 67 A.D.2d 140, 414 N.Y.S.2d 906, 909 (1st Dept. 1979); aff'd, 50 N.Y.2d 885, 408 N.E.2d 672, 430 N.Y.S.2d 265, cert. denied, 449 U.S. 1022 (1980).

Plaintiff does not deny that three days before the Article's publication date, Defendant Goldberg called Plaintiff to solicit her side of the story. Camer, 45 Wash. App. at 34-35; A10-A11. When given this opportunity, however, Plaintiff elected not to give "her side" of the story, and she can hardly blame Defendants now for printing a "one-sided" story. Id. The Article acknowledged that Defendant had not been able to talk with Plaintiff, thus reminding the reader that her point of view was not represented. Appendix A, ¶ 23. See also, Camer, 45 Wash. App. at 43; A29.

The appellate court's discussion of whether Plaintiff was a public figure and whether there was evidence of actual malice was unnecessary to its resolution of the case. In the absence of a false and unprivileged statement regarding the

Plaintiff, the question of fault need not be addressed. This court's rejection of the lower court's position on those issues would not require reversal of the judgment below.

E. Plaintiff failed to establish any damages.

Plaintiff urges this Court to hold that the appellate court's opinion will inhibit the free exercise of the First Amendment right to petition the government, at least in Washington State. Petition at 29. It is unclear whether this argument is advanced (1) to support an independent cause of action, different from defamation; (2) to establish liability for defamation in the absence of false statements of fact; or (3) to support a novel form of damages for defamation.

The argument cannot support a new and independent cause of action, because

only a claim for defamation has been pleaded.

Nor can plaintiff's assertion serv as a substitute for the essential elements of a defamation claim: falsity, an unprivileged communication, fault, and damages. Mark v. Seattle Times Co., 96 Wash. 2d 473, 486, 635 P.2d 1081 (1981), cert. denied, 457 U.S. 1124 (1982). Plaintiff may mean suggest that communication which would otherwise be constitutionally privileg under New York Times Co. v. Sullivan and its progeny, is not so privileged its subject matter involves the plaintiff's exercise of First Amendment rights. There is no authority which suggests that a lower threshold for "actual malice" should apply to public tions regarding a plaintiff's public speech. Indeed, the more a plaintiff does to speak out publicly on

controversial issues, the more likely it is that he or she will be held a public figure.

Plaintiff has cited no authority holding that a chilling effect on her exercise of freedom of speech is a form of damages for defamation. Moreover, the record does not establish any such effect in this case. There is no evidence in the record that Plaintiff has been intimidated in any way as a result of the Article. In fact, Plaintiff testified that the Article did not cause her to refrain from taking any legal action. Camer Dep., CP Subfile 40, Attch. A, p. 102. Nor is there any evidence in the record showing that Plaintiff has been denied access to the courts.

Plaintiff's essential argument is that she should be immune to criticism of her legal actions, because she has a

right to seek redress in the courts. Her argument turns the First Amendment on its head. It does not advance freedom of speech, but rather tends to limit or destroy the freedoms enjoyed by all citizens.

Plaintiff has also suggested that an unrelated lawsuit was "not improbabl[y]" dismissed as a result of the Article. Petition at 28-29. She concedes there is no proof of that allegation. The appellate court correctly concluded that Plaintiff failed to introduce clear and convincing evidence of any damages resulting from the Article.

CONCLUSION

For these several reasons, Plaintiff Camer's petition for certiorari should be denied.

RESPECTFULLY SUBMITTED this Eighth day of May, 1987.

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Appendix A

Seattle Post-Intelligencer
June 20, 1982

'Nuisance' suits clog
the courts

By Susan Goldberg
P-I Reporter

1. The cases have become something of a joke.
2. There was the man who sued the state, claiming the sales tax held him in involuntary servitude.
3. After losing the case, he sued the judge and the attorney general. After losing that case, he sued the judge, attorney general and appellate court judges. And after losing that case, he sued the judge, attorney general, appellate court judges and all nine state supreme court justices.
4. But the punch line, say attorneys, isn't funny.
5. "What these people do is hammer us with absolute nonsense you have to respond to, and it sucks away a very precious commodity to us and that commodity is time," says Mike Redman, executive secretary of the Washington Associates of Prosecuting Attorneys.

Constant litigants

6. Redman's complaints are echoed in the legal libraries and

law offices of the state attorne general, city hall and Seattle School District, where the constant battle against "nuisance suers," as they are known, costs the government agencies--and the taxpayers--millions each year.

7. The constant litigants are sometimes just angry citizens. Many however, are prisoners, buc ing for a way to get out. Sometimes, they succeed and in at least one case, the result, says Redman, is no laughing matter.

8. Samuel Pietro Evans ran awa from the Tri-Cities Work and Training Release Center on July 1974. It says so, in Evans word right on the statement he signed when pleading guilty to the esca charge.

9. "I escaped from the Pasco work release facility on July 5, 1974."

10. But that apparently doesn't say so in the right technical language, according to the State Court of Appeals in Spokane. In April, the court ruled in a 2-1 decision that the three-time con victed felon was entitled to a n trial on the escape charge.

'There's hope'

11. For Washington's 39 county prosecutors, the name Samuel Pietro Evans is quickly becoming infamous.

12. "What the Evans decision ha said to everyone who doesn't thi Walla Walla is the greatest plac

to spend the summer is, 'There's hope,'" Redman says.

13. "They're going to write the Court of Appeals and say, 'Guys, you don't know me, but I got a problem like Samuel Pietro Evans and think I ought to have a new trial.'"

14. Redman predicts the result will be a great increase in nuisance suits--personal restraint petitions filed with the Court of Appeals or the State Supreme Court by prisoners who, like Evans, pleaded guilty to the crimes that landed them behind bars.

'Constitutional crazies'

15. The potential is formidable: about 85 percent of the state's 5,200 prisoners pleaded guilty, he says.

16. But Redman has other reasons to worry about nuisance suits, and not just those filed by prisoners.

17. There are also the suits brought by "constitutional crazies", he says. Those are the people who think "fluoridated water is a communist plot to enslave us" or insist that the only legal tender is gold and battle in court over the use of paper money.

18. Then there are suits by those "who are just not operating with a level bubble," Redman says. Those are the people who keep overworked county prosecutors busy responding to charges he says are preposterous on their face.

19. In all, Redman estimates t state's county prosecutors spen about $750,000 each year, not counting court costs and outsid attorneys' fees, to fend off th myriad of frivolous charges brought by constant litigants.

20. Similar charges are levele correctly or not, at Seattle ci zens like Dorothy Camer and Margaret Coughlin, who together have filed nearly two dozen separate legal actions against state, city and Seattle School District.

21. Both women often represent themselves, which is called a " se" case. They prepare their o legal briefs and arguments with an attorney.

22. Camer, a West Seattle moth has taken the district to court six times in the last three years--not counting numerous appeals and reconsiderations--o a variety of educational issues behalf of her children, Pepi an Kirk. In addition, she has fil three Office for Civil Rights complaints against the district and one against the state.

23. She has never won a case.

Camer would not talk to th Post-Intelligencer. She said s was "too busy" preparing a lega brief asking for a reconsiderat in a case she recently lost.

24. Margaret Coughlin, a Magno resident, is also a familiar fa in the courts and to attorneys the school district and city.

25. Coughlin, says attorney Di Mann who says he has "spent man

many hours" defending the city against her suits, has been taking the city to court "non-stop" since 1974, mostly about zoning disputes and what she claims are inadequate environmental impact statements prepared by the city.

26. "Her file is kept in giant cardboard boxes," Mann says.

27. In addition, Coughlin brought the school district to court three times in 1981 about environmental impact statements she says are faulty. Two of those cases, says Dave Burman, who is representing the district against Coughlin, are still pending.

28. Like Camer, Coughlin said that she, too, could not talk to the P-I because she is busy working on an appeal for a case she recently lost against the city.

'Thousands of dollars'

29. Attorneys for the city and district are hesitant to estimate how much constant litigators cost their agencies--and the taxpayers.

30. "It is well into the thousands of dollars," is the only guess Mann will make about the Coughlin cases alone.

31. Michael Hoge, attorney for the school district, puts it this way, "If you count the outside attorneys' fees, my own time and that of others in the office, over the past two or three years it would not be an exaggeration to say that we've spent about $20,000 a year on these cases."

32. The three Coughlin cases alone have so far cost the district $8,000 in legal fees racked up by Burman, who was brought in from a private firm t handle the case.

33. The district's legal office budget was about $500,000 this year.

34. "We've got dozens of those people," says Malachy Murphy, deputy state attorney general.

35. Last month, he says, the state had 96 pending civil right violation cases, most of which were brought by prisoners who ha previously filed many such motio

36. Moreover, he says his offic fights over 100 "pro se" cases each year brought by citizens.

37. "Most of these cases are no legitimate," Murphy says. "The claims are so off the wall they have to represent themselves."

38. Although the people respons ble for the constant suits range from convicted felons to ordinar folks with a beef about govern- ment, Murphy says they all have one thing in common.

39. "A characteristic of these people is that they have the absolute inability to accept a 'no' from government or a judge, he says.

40. He also says the number of "pro se" suits against public agencies are a "touchstone, an indicator, of the level of citiz frustration with the government all levels."

41. Apparently, at the state level, frustration is running

pretty high. But Murphy won't "hazard a guess" at how much the state spends fighting such cases.

42. Constant litigators may be more of a nuisance to attorneys and an expense to taxpayers, however.

43. Murphy says they have had a "significant impact" on the increasing caseload that has clogged the state and federal court systems in recent years.

44. The overcrowded courts haven't escaped the notice of state lawmakers, either. Last year, the Senate passed three measures, including a proposed constitutional amendment, aimed at easing congestion in the courts.

45. The constitutional amendment, which was voted down in the 1981 November election, was specifically aimed at the county Superior Courts, many of which report huge backlogs of cases and lengthy delays in bringing cases to trial.

46. The overcrowding has extended to the State Supreme Court, where 863 filings were reported last year. That represents an increase of more than 12 percent over 1980 and the highest number of filings since 1969, when the Court of Appeals was established to assume intermediate responsibility for appeals cases.

47. In the Court of Appeals, nearly 2,800 new cases were filed for review. That's about 1,000 more cases filed for review in 1976.

48. No figures are available from the courts about how many of their

cases are filed by the same people, time and time again.

49. Part of the problem, says an attorney familiar with constant litigation, is that in Washington, the losing party in a lawsuit does not necessarily have to pay the attorneys' fees of the winning side. In some states, reimbursement is automatic.

Remedies few

50. It is particularly difficult for an arm of Washington government to recover fees from a citizen who has brought a suit, no matter how often or how frivolous, he says.

51. The result is that citizens representing themselves have little to lose by taking government agencies to court.

52. "There isn't any set remedy for these kind of things," he says. "I suspect that public agencies, to a large part, just have to live with these things."

53. Remedies are, in fact, few and far between.

54. Clearly, says Murphy, the cases cannot be ignored. The consequences of brushing off constant litigants can be too great.

55. "You've got to take a look at every one of them, because if you ignored them, some day you'd wind up paying some huge judgment to these folks," he says.

'Stretching the point'

56. Nor do legal remedies--namely bringing a cease and desist order or similar injunctions against the litigants--provide easy solutions.

57. For the city to bring such an order against Coughlin, for example, it would have to "prove she has filed a series of frivolous cases," Mann says. "That would be really stretching the point."

58. At the school district, where officials are faced with budget cuts of $16 million for next year--and possibly $10 million more if Gov. John Spellman makes 8.2 percent cuts for all state agencies--Hoge tells a similar story.

59. The district hasn't tried to stop Camer, he says, because "the standards courts have set down for denying citizen access to the courts are, for good reasons, extremely stringent."

60. "Only in the most aggravated cases will a person be denied from pursuing legal remedies for grievances, whether real or imagined."

'Hell of a war'

61. Despite their annoyance with constant litigants, most attorneys for government agencies, including those who feel the most maligned by what they see as abuse of the court system, agree with Hoge. In principle, anyway.

62. "We fought a hell of war to get a government to meet our

needs," Redman says, "and one of the things we fought for was access to the courts, for everyone."

63. "The problem is that our crime rate is going up and we're having to spend time on nuisance suits," Redman says of suits brought by prisoners.

64. "They are time-consuming, expensive and frustrating for me and others involved," Hoge says, "but that's the price we pay for a legal system where each citizen has the right to be heard in the courts."

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Appendix B

Plaintiffs' First Interrogatories to Defendant Seattle Post-Intelligencer and Answers Thereto, at 2.

2. Identify any published legal or ethical guidelines or standards used by employees of the Seattle Post-Intelligencer or recommended for the use of such employees of the Seattle Post-Intelligencer.

Answer:

The following published materials are frequently used by employees of the Post-Intelligencer and their use is recommended by management:

Bench-Bar-Press Principles and Guidelines; Associated Press Style Book and Libel Manual; The Word: An AP Guide to Good News Writing

Other publications may be consulted from time to time by employees of the Post-Intelligencer.

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Appendix C

THE HEARST CORPORATION
(Listing of Divisions/Subsidiaries
as of December 31, 1986)

Divisions

Home Office	WBAL (AM-FM-TV)
Arbor House Publishing Co.	WDTN (TV)
Avon Books	WISN (AM-FM-TV)
Baltimore News American	WTAE (AM-FM-TV)
Business Magazines Publishing	WCVB (TV)
Cal Graphics	
Capital Newspapers	
Down East Timberlands	
Electronic Publishing Services	
Hearst Books	
Hearst Books/Business Publishing Group Administrative	
Hearst Cable Communications	
Hearst Enterprises	
Hearst Magazines	
Hearst Metrotone News	

Hearst Realties

Hearst Trade Books Administrative

International Studio art

King Features Syndicate

KMBC (TV)

Los Angeles Herald-Examiner

Puck-The Comic Weekly

San Antonio Light

San Francisco Examiner

San Francisco Realties

Seattle Post-Intelligencer

Sunical Land & Livestock

Subsidiaries

Beaumont Enterprise Company, Inc.

**Capital Newspapers Public Benefit Fund Inc.

Clearwater Newspapers, Inc.

Communications Data Services, Inc.

Cowles Syndicate, inc.

Eastern News Distributors, Inc.

Edwardsville Publishing Company, Inc

Features Music Corp.

*Good Housekeeping, Inc.

Hearst Advertising Service Inc.

Hearst Broadcasting Productions, Inc.

Hearst Business Communications, Inc.

Hearst Business Media Corporation

Hearst Cablevision of California, Inc.

Hearst Canada Inc.

*Hearst Canadian, Ltd.

Hearst Community Newspapers, Inc.

Hearst Florida Newspapers, Inc.

Hearst Professional Magazines, Inc.

Hearst Radio, Inc.

*Hearst Realty Development Co., Inc.

Hesco Supply Company, Inc.

Hillsborough Community Publications, Inc.

Huron Publishing Company, Inc.

King Features Entertainment, Inc.

*KFS Music, Inc.

*King Features Services, Inc.

*King Features Syndicate, Inc.

King Features Television Productions, Inc.

*La Cuesta Encantada Corporation

Laredo Times Company, Inc.

**Los Angeles Herald Examiner Benefit Fund

Midland Newspapers, Inc.

Midland Publishing Company, Inc.

*Mirror Holding Company

North American Syndicate, Inc.

*Old Colony News Corporation

*Omega Publishing Corporation

Periodical Publisher's Service Bureau, Inc.

Plainview Newspapers, Inc.

Reader Mail Inc.

**San Francisco Examiner Charities, Inc.

San Francisco Newspaper Printing Company, Inc.

*San Simeon Realty & Development Corporation

*Science Digest, Inc.

*Telenews Film Corporation

*That Cosmopolitan Girl Library, Inc.

The National Magazine Company Limited

252 - 254 West 55th Street
Corporation

William Morrow and Company, Inc.

Wilmor Warehouse and Shipping Co.,
Inc.

*Inactive
**Nonprofit corporations

Appendix D

THE SUPREME COURT OF WASHINGTON

DOROTHY CAMER and MARGARET COUGHLIN, Petitioners,	)	NO. 53252-4 Court of Appeals No. 15814-7-I
v.	)	ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW AND DENYING PETITION FOR REVIEW ON THE MERITS
SEATTLE POST-INTELLIGENCER and SUSAN GOLDBERG, Respondents.	)	

This matter came on before the Court on its January 6, 1987, Motion Calendar on Petitioner's Motion for Extension of Time to File Petition for Review. The Court having considered the Motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That Petitioner's Motion for Extension of Time to File Petition for Review is granted and the Petition for Review is denied on the merits.

DATED at Olympia, Washington this 6th day of January, 1987.

James R. Dolliver
CHIEF JUSTICE

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